REMARKS/ARGUMENTS

The Office Action of March 2, 2006 subjected the claims to a restriction requirement under 35 U.S.C. 121 restricting the application to Group I, claims 1-33 drawn to a method for the investigation of a fuel cell system, and Group II, claims 34-45 (actually claims 34-43) drawn to an apparatus for the investigation of a fuel cell system. Applicant hereby formally elects to prosecute the invention of Group I, claims 1-33 with traverse for the following reasons. The Examiner's attention is respectfully directed to 35 U.S.C. 121 which states: "If two or more independent and distinct inventions are claimed in one application, the director may require the application to be restricted to one of the inventions." The restriction requirement fails to identify that the inventions are independent from each other. Examples of independent inventions would be an invention to a football, and an invention to an internal combustion engine. Those two inventions have nothing in common and therefore are independent and not related to each other. In the instant application, claims 1-33 and 44-46 are drawn to a method for the investigation of a fuel cell system, and claims 34-43 are drawn to an apparatus for use in the investigation of a fuel cell system. As such, the present inventions are related to each other and therefore are not independent. Applicant properly included both inventions in one application for a number of reasons, including meeting the statutory requirements of 35 U.S.C. 112. Since the inventions of the instant application are indeed related to each other and therefore not independent, applicant is entitled to have the inventions examined together. Withdrawal of the restriction requirement is respectfully requested.

Claims 1-33 have been rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. Apparently, the Examiner has taken the position that the steps of: developing an association between a predetermined electrical power output and the actual power output to determine if there is leakage in a fuel cell, heating the fuel cell to an operating temperature and maximum temperature to measure the temperature of the fuel cell in normal operation and the actual heat output to determine if there is leakage occurring in the fuel cell, and/or closing off valves to measure the pressure within the fuel cell and its possible changes due to leakage, are somehow essential steps. Applicant has reviewed the specification for the instant application and can find no statement in the specification that would identify such steps as being essential and thus required to be included in the claims. Absent the Examiner pointing out with particularity to page, line number where such statements occur in the specification, the rejection should be withdrawn.

Claim 3 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has amended claim 3 to recite: "wherein the mixture comprises substantially 95% N_2 and 5% H_2." The amendment is believed to render moot the rejection and withdrawal of the rejection under 35 U.S.C. 112 is respectfully requested.

Claims 26-29 have been rejected under 35 U.S.C. Section 112, second paragraph. Applicant has canceled claims 26-29 rendering the rejection moot.

Claims 30-32 have been rejected under 35 U.S.C. 112, second paragraph. Applicant has amended claim 30 to recite in part: "and a second test is carried out in the

same manner as the first test." Claims 31-32 have each been amended to recite in part: "wherein said second test is carried out to determine ...". The amendments to claims 30-32 are believed to render moot the rejection and withdrawal of the same is respectfully requested.

Claims 1-2, 4-5 and 10-15 have been rejected under 35 U.S.C. 102(b) as anticipated by Bette et al, U.S. Patent No. 6,156,447. Applicant believes that claim 1 as originally filed is not anticipated or rendered obvious by the references of record. Applicant has amended independent claim 1 in a manner to address rejections of other claims in the application and to make the method of claim 1 clearer. Independent claim 1 now recites in part: "each said first test being carried out with a mixture of at least one inert gas with at least one fuel permissible for the operation of the fuel cell system, said mixture being supplied to the anode side of the fuel cell system and the amount of the fuel in the mixture being predetermined such that a portion of the fuel present in said mixture lies below the value at which the mixture is flammable in air." None of the references of record suggest supplying such a mixture to the anode side of the fuel cell system to perform the first test.

The Examiner's attention is respectfully directed to Bette '447, column 4, lines 18-48. Bette et al discloses first purging the anode and cathode gas areas with nitrogen (column 4, lines 18-22). Thereafter, the nitrogen is removed from the cell by pumping it out (column 4, lines 27-29). Thereafter, the empty anode gas area is then filled with hydrogen (column 4, lines 42-44). Because Bette et al does not disclose a mixture being fed into the anode side of a fuel cell, wherein the mixture includes an inert gas and an

amount of a fuel below a value at which the mixture is flammable in air, Bette et al does not anticipate independent claim 1.

Claims 6-9 and 18-21 and 30-32 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bette et al '447. However, because Bette et al failed to disclose the above-recited limitations in independent claim 1, Applicant maintains that no prima facie case of obviousness can be established in view of Bette et al '447.

Claims 16-17 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Bette et al '447 in view of Tomimatsu et al, U.S. Patent No. 5,595,832. However, because Bette '447 fails to disclose the above-recited limitations set forth in claim 1, and Tomimatsu et al '832 fails to overcome the deficiencies of Bette et al, no prima facie case of obviousness can be established with respect to the claimed invention over Bette et al '447 in view of Tomimatsu et al '832.

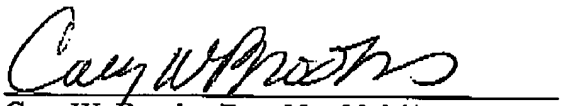
Claims 22-25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Bette '447 in view of Bailey et al, U.S. Patent No. 5,763,113. Applicant's counsel notes that Bailey et al is actually U.S. Patent No. 6,638,650. Again, because Bailey et al '447 fails to disclose the above-recited limitations of independent claim 1 and because Bailey et al '650 fails to overcome the deficiencies of Bette et al, no prima facie case of obviousness can be established with respect to the claimed invention.

Claim 33 had been rejected under 35 U.S.C. §103(a) as being unpatentable over Bette '447 in view of Meltser et al, U.S. Patent No. 5,763,113. Again, because Bette et al '447 fails to disclose the above-recited limitations set forth in independent claim 1 and because Meltser et al fails to overcome the deficiencies of Bette et al, no prima facie case of obviousness can be established with respect to the claimed invention.

Applicant has added claims 44-46, each depending from independent claim 1, to more particularly point out and distinctly claim Applicant's invention.

In view of the above amendments and remarks, Applicant respectfully requests allowance of claims 1-25 and 30-46 now in the case.

Respectfully submitted,



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